THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs: 17317 of 2004 and 12554 of 2005

Dated 11..08..2005

Between:

M/s Sreedevi 70 MM, Chanda Nagar,
Serilingampally Mandal,

Ranga Reddy District rep. by its

Managing Partner J.Jaipal.

..... PETITIONER

AND

1. Entertainment Tax Officer,

Rajendra Nagar, Ranga Reddy District.

.....RESPONDENTs

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs: 17317 of 2004 and 12554 of 2005

COMMON ORDER: (per Sri BRSR,J)

Both these writ petitions are being disposed of by a common order since not only the question that arises for our consideration but also the petitioner is the same.

The petitioner is carrying on business in exhibiting films having obtained the licence as is required under the provisions of the A.P. Cinematographic Act and the allied acts and Rules. It is also a licensee under the provisions of the A.P. Entertainment Tax Act, 1939 (for short 'the Act'). The theatre is situated in Chandanagar, Serilingampally. The dispute centers round the payment of entertainment tax for the assessment years 2001-02 under the provisions of the said Act.

It is asserted in the affidavit about which there is no dispute that the petitioner opted to pay the entertainment tax under the slab system by filing necessary application in Form-III as per Rule 27 of the A.P. Entertainment Tax Rules (for short 'the Rules'). The competent authority having received the said form issued permit in Form IV and accordingly permitted the petitioner-theatre to pay the tax under section 5 of the Act applying the multiplier applicable to Grade-III municipality since the Serilingampally municipality, at the relevant time, was Grade-III municipality during that particular year. There is no dispute that the petitioner has been paying the taxes regularly.

The cause of action for filing this writ petition had arisen when the respondents issued show cause notice dated 1.9.2003 proposing to levy and collect the entertainment tax at a higher rate on the simple ground that there was a short levy of entertainment tax since the Serilingampally municipality within whose jurisdiction the petitioner- theatre is situated was upgraded to that of Grade-II municipality w.e.f. 18.5.2001 vide G.O.Ms.No.208 Municipal Administration & Urban Development Department. The petitioner filed its objections to the proposed levy of tax at a higher rate with retrospective effect and requested the authorities to drop the further proceedings. The respondents having rejected the objection, issued the impugned demand notice dated 31.8.2004 and accordingly levied the tax at Rs.11,85,863/- for the period from 18.5.2001 to 31.3.2002 and in the similar manner issued demand notice dated 30.5.2005 revising Form-IV for the subsequent year vide the impugned proceedings dated 2.5.2005 requiring the petitioner to pay the following;

"The entertainment tax liability under Serilingampally municipality is as under:-

Gross collection capacity : Rs.19,799-00

Municipality : Section grade

19,799 x 22 x 22

---------- = Rs.95,827/- "

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In these writ petitions Sri Bhaskar Reddy, learned counsel for the petitioner relying on the decision of this Court in ***SWAMY THEATRE, SANATHNAGAR VS. DEPUTY COMMERCIAL TAX OFFICER,*** contended that the authorities have no jurisdiction to vary the amount of entertainment tax payable by the petitioner with retrospective effect.

The submission is well founded. This Court while interpreting sub-section (6) of Section 5 of the provisions of the said Act held as follows;

" Sub-section (6) of Section 5 confers the power to vary the amount of tax "during the period of option" in the circumstances stated therein. The opening words of Section 6 namely "It shall be lawful for the prescribed authority to vary the amount of tax payable by the proprietor under sub-section (1) during the period of option permitted under this section at any time "employ the words "the period of option" and "at any time" The words "at any time" signify the limitation of time aspect confining to the period of option. In other words, the period of option qualifies the time factor inferable from the words "at any time". The words "at any time" occurring in sub-rule (13) of rule 27 must therefore be interpreted as limiting the power to vary the tax 'during the period of option'. The words "during the period of option" occurring in sub-section (6) of Section 5 must be read into sub-rule (13). Otherwise, it will be ultra vires the section. Accordingly, held "the liability of the petitioner, therefore, to pay at the enhanced rate of Rs.4,941/- commenced with effect from 1st April 1988 as the notice of variation in the amount of tax payable was issued during the period from 1.4.1988 to 31.3.1989, which is the period of option under sub-section (6) of Section 5."

This Court having regard to the express language employed in sub-section (6) of Section 5 of the Act held that the respondents have no authority in law to levy and collect the entertainment tax with retrospective effect. The words “during the period of option” employed in sub-section (6) of Section 5 is required to be read with sub-rule (13) is the view taken by this Court. This Court accordingly held that the liability of the theatre to pay the enhanced rate is prospective in its nature and will be applicable only after the prescribed form is submitted, if any, exercising the option even after the upgradation of the municipality. In such view of the matter, no further discussion is required except to follow the said judgment, which according to the learned special standing counsel has attained finality since the state did not prefer any appeal against the said judgment.

That a detailed counter affidavit has been filed by the department in which the facts stated in the affidavit filed in support of the writ petition are not disputed. The learned special standing counsel contended that an appeal against the impugned order lies and therefore the petitioner ought to have preferred an appeal instead of invoking the jurisdiction of the Court under Article 226 of the Constitution of India. We are not impressed by the submission made by the learned special standing counsel at this stage since the writ petitions have already been admitted and that apart the subject matter is squarely covered by an authoritative pronouncement of this Court.

Following the said judgment, the impugned notice dated 31.8.2004 in W.P.No.17317 of 2004 is accordingly quashed. That so far as W.P.No.12554 of 2005 is concerned, the same is disposed of with a direction to the respondents herein to verify form IV issued by the 1st respondent in the first occasion and if there is any variance in the amounts between the amounts specified in form IV and the amounts paid by the petitioner, the difference can always be claimed by the respondent and upon such claim if any to be made the petitioner is bound to pay the same.

W.P.No.17317 of 2004 is allowed and W.P.No.12554 of 2005 is disposed of accordingly.

(B.SUDERSHAN REDDY,J)

dated 11..08..2005

(RAMESH RANGANATHAN,J)

msv